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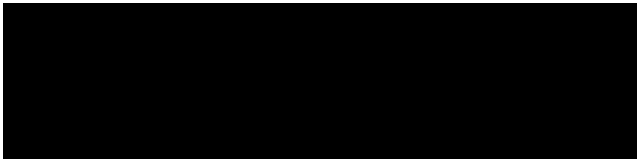
U.S. Department of Homeland Security
20 Mass. Rm. A3042, 425 I Street, N.W.
Washington, DC 20536

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U.S. Citizenship
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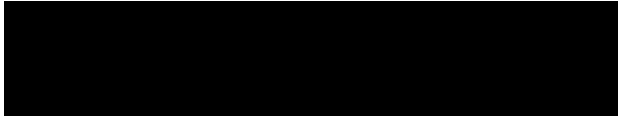
B6



FILE: EAC 01 199 55638 Office: VERMONT SERVICE CENTER

Date: MAR 02 2004

IN RE: Petitioner:
Beneficiary:



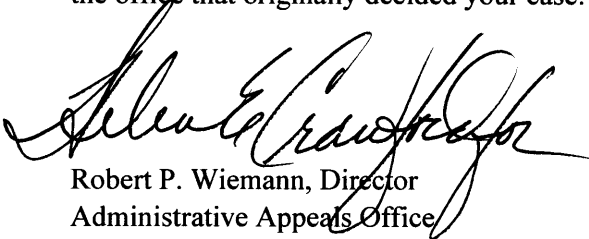
PETITION: Immigrant Petition for an Alien Worker as an Other Worker Pursuant to Section 203(b)(3) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(3)

ON BEHALF OF PETITIONER:

SELF-REPRESENTED

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.


Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The preference visa petition was denied by the Director, Vermont Service Center, and is now before the Administrative Appeals Office on Appeal. The appeal will be rejected.

The petitioner is a construction company. It seeks to employ the beneficiary permanently in the United States as a mural painter. The director determined that the petition was not accompanied by a properly endorsed individual labor certification approved by the Department of Labor, as required by statute.

On appeal, the petitioner provides a statement.

8 C.F.R. § 103.1(f)(3)(iii) states in pertinent part:

Appellate Authorities. In addition, the Associate Commissioner for Examinations exercises appellate jurisdiction over decisions on:

- (B) Petitions for immigrant visa classification based on employment or as a special immigrant or entrepreneur under §§ 204.5 and 204.6 of this chapter except when the denial of the petition is based upon lack of certification by the Secretary of Labor under section 212(a)(5)(A) of the Act.

There is no appeal from a denial based on the lack of a certification by the Secretary of Labor. It is noted that the director erroneously allowed the petitioner to file the appeal. The director's error does not, and cannot, supersede the regulation regarding the ability to appeal a denial based upon a lack of certification by the Secretary of Labor. Therefore, the appeal must be rejected.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not met that burden.

ORDER: The appeal is rejected.